

out in the form, the commander may authorize modification. This agreement is substantially complied with when the Air Force authority who delivered the accused is informed of his or her prospective release for return to military authorities, and when the individual is furnished transportation back to his or her station together with necessary funds to cover incidental expenses enroute thereto. Copies of the statement or agreement referenced above, and in § 884.7, will be furnished to the civil authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (§ 884.3). The commander, who authorized delivery to civil authority or designee, will immediately notify the civil authority if the return of the member to Air Force custody is no longer required (e.g., discharge from the Air Force).

§ 884.9 Request for delivery by authorities of any state in which the member requested is not located.

This section applies to requested members who are not located overseas. With respect to the extradition process, Air Force ed Force personnel have the same status as persons not in the Armed Forces. Accordingly, if the delivery of a military member is requested by a state other than the state in which the member is located, the requesting state will be required, in the absence of a waiver of extradition process by the member concerned, to use its extradition procedures and to make arrangements to take the individual into custody in the state where he or she is located. It is contrary to Air Force policy to transfer a military member from a base within one state to a base within another state for the purpose of making him or her amenable to prosecution by civil authorities.

Subpart C—Requests for Custody of Members Stationed Outside the United States

§ 884.10 Air Force policy.

(a) Air Force members are expected to comply with orders issued by a federal or state court of competent jurisdiction unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, includ-

ing separation for cause under AFRs 36-2 and 39-1.² Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force members, but not for the purpose of enforcing private civil obligations.

(b) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid complying with valid orders of a federal or state court of competent jurisdiction.

(c) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JACM and JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

(d) When federal, state or local authorities request delivery of an Air Force member who is stationed outside the United States and who is convicted of or is charged by such authorities with a felony or other serious offense punishable by confinement for more than one year under the laws of the requesting jurisdiction, or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another, the member normally will be expeditiously returned to the United States for delivery to the requesting authorities. Delivery of the member is not required if the controversy can be resolved without returning the member to the United States, or the request for delivery of the member is denied in accordance with this subpart.

(e) An Air Force member stationed outside the United States ordinarily will not be returned to the United States for delivery to civilian authorities in connection with an offense not enumerated in paragraph (d) of this section, but The Judge Advocate General (TJAG) may direct return in such

²See footnote 1 in § 884.3.

cases when TJAG determines that the best interests of the Air Force require it.

(f) Before action is taken under this subpart, the member will be afforded the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced, or otherwise to show legitimate cause for non-compliance.

§ 884.11 Assigned responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.10(d) of this subpart.

(b) The Judge Advocate General (TJAG) of the Air Force may approve requests which fall under § 884.10(d) of this subpart, or recommend denial of such requests. TJAG or his designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.10(e) of this subpart.

(2) Requests for delays of up to 90 days in completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Military Justice Division (HQ USAF/JAJM) is responsible for the timely processing of requests for return of members to the United States for delivery to civilian authorities, and for notifying requesting authorities of decisions on requests. Action on a request will be completed within 30 days after receipt of the request by HQ USAF/JAJM, unless a delay is granted. HQ USAF/JAJM also is responsible for all reports and notifications to ASD (FM&P) and General Counsel, DOD (DOD/GC), as required by this part. HQ USAF/JAJM will conduct all communications with requesters.

§ 884.12 Procedures for return of an Air Force member to the United States.

(a) A request for return of an Air Force member to the United States for delivery to civilian authorities shall:

(1) Fully identify the member sought. Requesting agencies shall provide the members' name, grade, social security number (SSN), and unit of assignment, to the extent that information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, the request shall specify the maximum punishment under the laws of the requesting jurisdiction. If the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another, the request should so specify.

(3) Include copies of all relevant indictments, informations, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias, or other process directing or authorizing the requesting authorities to take the member into custody. Reports of investigation and other material concerning the background of the case shall be included, if reasonably available.

(4) State that the requesting authorities will initiate appropriate action to secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, at the expense of the requesting authorities, and that they will notify HQ USAF/JAJM of the member's release from custody and the ultimate disposition of the matter.

(5) Be signed by a United States Attorney or Assistant U.S. Attorney, by the Governor or other duly authorized officer of a requesting state or local jurisdiction, or by the judge, magistrate or clerk of a court of competent jurisdiction.

(b) Requests for return of members to the United States for delivery to civilian authorities shall be directed to HQ USAF/JAJM, Bolling AFB, DC 20332-6128. Requests received by any other Air Force agency or official must be sent to HQ USAF/JAJM by the most expeditious available means.

(c) Upon receipt of a request, HQ USAF/JAJM will promptly notify the members' commander, who will consult with his or her servicing staff judge advocate and provide to HQ USAF/JAJM,